

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In re)

Broadband PCS C and F Block)

Installment Payment)

Restructuring)

WT Docket No. 97-82
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY COMMENTS OF ALPINE PCS, INC.

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Summary

Alpine PCS, Inc. ("Alpine") submits its reply comments with respect to certain broadband PCS Block C and F installment payment issues. By and large those parties submitting comments recognize the serious potential of mass defaults by C Block (and to a lesser extent F Block) licensees caused by the current lack of sufficient investment capital to meet the immense construction and working capital needs of the surfeit of PCS systems the Commission has recently licensed. Absent decisive action to restructure the installment payment obligations of C and F Block licensees, the Commission would be inviting a C Block meltdown.

Those parties who oppose restructuring of Block C and F PCS installment payments take the position that C and F Block licensees knew the rules going in, knew they were expected to pay what they bid for their licenses on the terms set by the Commission, knew they had to obtain financing for construction and operation, and knew what the rules provided for in the event of default. To these parties, if Block C and F licensees default, they default; the government should then simply re-auction the licenses, and seek penalties from the defaulters.

This position is short sighted and, if adopted, threatens the viability of all C and F Block licensees as allowing large numbers of licensees to default threatens a complete meltdown of the entrepreneur's blocks. This would destroy a force for competition and innovation, lessen the government revenues obtained from the C and F Block auctions, and erode public and Congressional confidence in the auction program.

Accordingly, restructuring relief is plainly warranted. In doing so, several points should be noted, however. In structuring that relief, consistent with the principle of fairness, to the extent the Commission adopts any particular program of relief, that program should be available to all C and F Block licensees. Moreover, licensees must have the option to select from among a menu of restructuring options. And, whatever the Commission does, it must do it quickly to have any meaningful effect.

As to particular restructuring proposals, Alpine's sees difficulties in implementing any amnesty program, the most significant one being that it is unlikely that licenses turned in during an amnesty period would be quickly re-auctioned. Reduction of the interest rate to 5.5 percent for all C Block licensees would be fully consistent with the principle that C Block licensees pay interest at the government's cost of funds, as this was the approximate interest rate on 10 year U.S. Treasury Notes when the C Block auction commenced. Moreover, establishing a period during which interest would not accrue on installment obligations, would allow licensees to commit their resources to system construction and operation without an increasingly compounding installment debt. In addition, relaxation of the so-called unjust enrichment rules to facilitate an early sale of C and F Block licensees which experience financing difficulties would assist in preventing defaults. Finally, the utility of allowing subordination of the installment payment debt for vendor and working capital financing appears to have virtually universal support and should be adopted.

In sum, allowing wholesale default by C and F Block licensees is not in the public interest. Were the Commission a financial institution, faced with the prospect of substantial defaults by debtors, it would not stand idly by waiving installment notes and saying, "This is the deal you made, you are struck with it." No financial institution would let such a huge chunk of its capital evaporate by default. It would effect a workout to realize the best of a bad situation. The Commission, with its obligation to serve the public interest and America's taxpayers, should do no less.

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Broadband PCS C and F Block) WT Docket No. 97-82
Installment Payment Restructuring)

To: The Commission

Alpine PCS, Inc. ("Alpine"), by its attorneys and pursuant to the FCC's Public Notice, DA 97-679 (June 2, 1997), replies to the various comments filed with respect to broadband PCS Block C and F payment issues. In support, the following is shown:

1. Alpine has reviewed the various comments submitted in this proceeding. By and large those parties submitting comments recognize the serious potential of mass defaults by C Block (and to a lesser extent F Block) licensees caused by the current lack of sufficient investment capital to meet the immense construction and working capital needs of the surfeit of PCS systems the Commission has recently licensed. As these commenters show, absent quick, decisive action to restructure the installment payment obligations of C and F Block licensees, the Commission would be inviting a C Block meltdown.

2. This scenario, however, does not appear to bother those parties who oppose restructuring of Block C and F PCS installment payments. These parties generally take the position that C and F Block licensees knew the rules going in, knew they were expected to pay what they bid for their licenses on the terms set by the

Commission, knew they had to obtain financing for construction and operation, and knew what the rules provided for in the event of default. These parties, although they do not generally oppose annual installment payments instead of quarterly payments, or a reduction in the interest rate to reflect the government's actual cost of funds,^{1/} essentially take the position that if Block C and F licensees default, they default, that the government should simply re-auction the licenses, and then seek penalties from the defaulters.

3. The motivation to take that position is understandable, coming from those Block C and F licensees who enjoy the virtually unlimited resources of large well established local exchange or interexchange carriers such as Cook Inlet,^{2/} or Aerial,^{3/} or their

^{1/} As Alpine set forth in its opening comments, instead of the seven percent coupon rate some licensees have been charged, the correct interest rate reflecting the government's cost of funds based on the ten year note yield was 5.56 percent when the Block C auction commenced, and 6.53 percent when licenses were issued. In the interest of fairness and regulatory parity, all C Block licensees ought to be charged the same interest rate, which should run from the commencement of the auction, when business plans were formulated, not from an arbitrary date when licenses are eventually issued. That rate for the C Block auction is 5.56 percent.

^{2/} As Cook Inlet admits in its comments, it enjoys the financial backing of BellSouth, a \$45 billion market cap company with a tangible book value of more than \$12 billion. See BellSouth Quarterly Report on SEC Form 10-Q for the Quarter Ending March 31, 1997. BellSouth, of course, submitted extensive comments opposing restructuring. Cook also enjoys the financial resources of Western Wireless, which owns or controls a plethora of existing, well established, cash flow generating cellular systems.

^{3/} Aerial is an affiliate of Telephone and Data Systems, Inc. ("TDS"), a local exchange carrier, which enjoys a market
(continued...)

backers, such as BellSouth and Sprint who would be in a position to pick up distressed C and F Block systems in bankruptcy or via re-auction for pennies on the dollar. The motivation to take this position is also understandable in the case of Nextel, which would benefit competitively from a crippled C Block as it attempts to implement its nationwide digital SMR network, which was largely conceived as a result of the Commission's largess with waivers and special considerations.^{4/}

4. Alpine also understands the frustration of those commenting parties who exercised caution in the bidding process, who were careful not to take on extraordinary risk, and who were often outbid by applicants which overextended themselves. Alpine not only understands, it shares those frustrations. Alpine is a true entrepreneurial small business. Robert F. Broz, Alpine's controlling shareholder, is one of the few original RSA lottery winners still in the cellular business. With principals possessing years of experience in wireless operations, Alpine carefully crafted its bidding strategy. It had the resources to develop all the markets for which it bid. It had no need for foreign ownership; nor to make use of rules which allowed huge billion

^{3/}(...continued)

capitalization and a book value in excess of \$2 billion, and which owns or controls scores of Block A and B cellular systems. See TDS Quarterly Report on SEC Form 10-Q for the Quarter Ending March 31, 1997.

^{4/} See, e.g., *Fleet Call, Inc.*, 6 FCC Rcd 6989 (1991). It is ironic that a company so steeped in a history of requesting and receiving waivers of long established rules is now heard to suggest the Commission should now scrupulously adhere to the letter of its rules.

dollar corporate investors to fit within a convoluted corporate structure and call themselves small businesses. Like other truly small businesses in the auction, Alpine was squeezed by, until recently, seemingly well financed bidders. It bid against companies which ran up the prices in many markets and have subsequently defaulted or which are now asking for restructuring relief. Had the Commission's rules prevented this irresponsible and destructive behavior by discouraging these companies from speculative bidding, Alpine would have paid a fair market value of much less per pop, would hold licenses for a greater number of pops, and would be well on its way to providing service to the public, instead of arguing to move the C Block out of limbo.

II. *Allowing large numbers of C and F Block licensees to default will not serve the public interest, and threatens a meltdown.*

5. It is easy to say, "They knew the rules. Tough luck." And if only those C Block licensees which overextended themselves would be affected by such an approach, then there would be some emotional appeal to that approach. Unfortunately, the effect of the large scale defaults which will likely occur absent installment payment restructuring will not be confined to the defaulting parties. Failure to grant C Block installment payment restructuring will have three serious deleterious side effects.

A. *Failure to grant relief places the entire C and F Blocks at risk of default.*

6. First, failure to grant C Block installment payment restructuring relief will adversely affect the entire C Block's ability to compete in the broadband wireless marketplace because it

will result in delaying service by these licensees. Service will be delayed whether or not significant defaults initially occur. Indeed, in Alpine's view, significant defaults are not likely to occur for some time. Rather, overextended licensees, with huge amounts of money at stake, and hoping to squeak by, will do what NextWave recently did and conserve resources by delaying build-outs while still making their installment payments. Thus, the meltdown will come, but it will likely not come quick. And during that time, the public will be without service in the affected markets.

7. When the meltdown does come, the Commission should not delude itself into thinking that it will quickly be able to re-auction defaulted licenses. Conditioned or not on payment of the installment debt, a substantial question exists whether the Commission has any authority to take action to reclaim licenses from a debtor in Chapter 11 reorganization proceedings.^{5/} The better view is that it cannot. Thus, re-auctioning defaulted licenses is likely to be a time consuming process.^{6/} And again, all during that time, the public will be without service in the affected markets.

8. As Alpine explained in its opening comments, the lack of service by other C Block licensees will have dire effects on licensees like Alpine. Alpine's business plan fully considers its

^{5/} See 11 U.S.C. Section 362 (automatic stay of actions against debtor effective upon filing of petition.)

^{6/} Accordingly, the suggestion of some commenters that the Commission should simply take back licenses in default and quickly re-auction them, is not adequately thought through.

need for build-out capital as well as for capital for its installment debt payments. However, a key component of Alpine's business plan is that there will be a viable C Block to provide roaming to Alpine's customers who wish to use PCS service in neighboring markets. Without the ability for its customers to roam within a reasonable period of time after obtaining service, Alpine and similarly situated C Block entrepreneurs will simply not be able to compete with the cellular A and B Blocks, the PCS A and B Blocks, and Nextel. Thus, the failure to grant installment debt restructuring relief will have adverse consequences not only to those who lack sufficient financing to construct their systems and commence operations, but also to those who are working to quickly commence service and begin operations such as Alpine.

B. Failure to grant relief will lead ultimately to smaller auction revenues from the C and F Blocks.

9. Second, failure to grant installment payment restructuring relief will likely in the long run adversely affect C Block auction revenues. If the Commission acts now and responsibly acknowledges the need for restructuring, and quickly bites the restructuring bullet, it will avoid more substantial restructuring measures at the hands of the bankruptcy courts following a C Block meltdown. In this connection, those parties who assert the Commission would eventually be made whole in a re-auction are simply dreaming. In the event of a C Block meltdown the Commission would have no hope of realizing anything near the prices previously bid. Nextel, and PCS Blocks A and B would have several years of head-start on defaulted C Block markets. After

witnessing the C Block carnage, no rational bidder would even approach the amounts previously bid.

10. Nor is it likely that the Commission could look to defaulting licensees to make up the difference, as some commenters suggest. If defaulting licensees had the means to pay their installment debts, they would not have defaulted in the first place. As an example, if the Commission has not to date been able to collect from BDPCS, how could it possibly think it will be able to exact and collect penalties from the tide of defaulting licensees if a meltdown occurs.

11. Plainly then, wholesale C Block defaults will adversely affect the ultimate revenue generated. By contrast, adopting several of the C Block restructuring proposals advanced by commenting parties would not ultimately result in lost government revenue.^{2/} However, Alpine wishes to make it clear that it believes that some type of pricing relief is needed, either in the way of substantial interest rate reduction, suspension of interest, discounts for early payment, or other principal reduction. To the extent the Commission has a qualm with the possibility of revenue

^{2/} These include the adoption of annual installment payments, extending the installment payment period to 15 or 20 years, relaxing the so-called unjust enrichment rules and the control group rules. Moreover, although marginal revenues would be affected by lowering of the interest rate charged, or by affording licensees a period of zero interest charges, in the long run this approach is more than offset by the likely revenue which would be lost from wholesale defaults.

loss, it must keep firmly in mind that the coming C Block meltdown will seriously impact revenues generated by any re-auction.^{8/}

C. Failure to grant relief will undermine public and Congressional confidence in the auction program.

12. Third, failure to grant installment debt restructuring relief will have adverse effects in terms of public confidence in the FCC's auction program. Wholesale Block C licensee default will erode public and Congressional confidence in the Commission's auction program and may result in withdrawal or limitation of Congressional authority to the Commission to conduct auction awards. Prior to the C Block, the auction program was successful. Failure to act now to protect the program sets it up for failure in the event of the C Block meltdown Alpine foresees.

III. Review of significant relief proposals.

13. Having reviewed the need for relief, it is appropriate to turn to specific relief proposals. In doing so, several points should be noted. First, it is to be emphasized that Alpine's perspective is that of a truly small business with the intent to construct and operate its systems. It is not looking for a free ride or Commission relief from overbidding. However, consistent with the principle of fairness, to the extent the Commission adopts any particular program of relief, that program should be available

^{8/} In Alpine's view it would be appropriate for the Commission to trade in some degree principal for equity such that Block C licensees which ultimately make it would, upon the sale of their systems to a third party, be required to share a proportionate amount of their profit with the government as a result of having received a reduction in the principal amount of their installment debt payments.

to all C and F Block licensees. Second, individual licensees face different situations. Thus, what is appropriate relief for Alpine might not be appropriate relief for another licensees. Thus, licensees must have the option to select from among a menu of restructuring options. Third, whatever the Commission does, it must do it quickly. Financing for C Block properties is in a state of limbo and will remain so until the Commission acts in this proceeding.

A. Amnesty.

14. Some licensees have argued that a way the Commission can minimize delay in re-auctions is to give Block C licensees who may have overextended themselves a limited window in which they may turn in without penalty one or more licenses in which they feel they can no longer effect a viable operation. Such licensees could use the refund of their down payments for the markets turned in to increase the viability of their other markets. In such a case, it is argued, the markets turned in could be re-auctioned with a minimal loss of revenue to the government.

15. In Alpine's view, an amnesty program would be fraught with difficulties, the most significant one being that it is unlikely that licenses turned in as a result of an amnesty provision will be quickly re-auctioned. This is because there would likely be a host of issues for the Commission to resolve, each of which could result in litigation.^{2/} Alpine estimates that

^{2/} These issues include: (1) whether parties who turn in licenses will be eligible to bid at the re-auction; (2)
(continued...)

these issues alone could result in court appeals which would delay re-auctioning by more than two and one-half years. And even in the absence of litigation, delays of upwards of a year could be expected just to effect a clean re-auction. The C Block simply cannot tolerate any further delay of this magnitude. Equity or vendor financing will not be available for small business C Block licensees until the re-auction winners are known and it is clear that the financial markets will support those entities. Moreover, entities such as Alpine which bid in good faith, which intend to construct their markets, but which have been harmed by the financial market's concern with the state of the C Block auction winners in general, will not be helped by an amnesty program. Thus, other forms of relief are needed.^{10/}

^{2/}(...continued)

whether the re-auction should be restricted to original block bidders, or opened to new entities; and (3) whether the Commission will take meaningful steps in any re-auction to ensure the C and F Blocks' availability for true entrepreneurs, and to limit speculation. Moreover, any re-auction must contain appropriate safeguards to ensure that those requiring relief are not given an opportunity to sweep up the smaller surrounding markets at a reduced price, thereby increasing their pops, averaging down their costs, and driving what remains of the smaller operators out of the PCS business.

^{10/} To the extent the Commission nevertheless chooses to adopt an amnesty program, it should adopt the following safeguards to limit speculation and overbidding in the re-auction:

1. Place an upward limit on the aggregate level of pops on which any entity or affiliate may own or bid upon;
2. Amend the aggregation rule to prevent small business credits from being claimed by entities which are not truly small businesses; and

(continued...)

B. Interest rate relief.

16. Reduction of the interest rate to 5.5 percent for all C Block licensees would, as Alpine showed in its opening comments, be fully consistent with the principle that C Block licensees pay interest at the government's cost of funds as this was the approximate interest rate on 10 year U.S. treasury notes when the C Block auction commenced. Thus, the current interest rate on C Block installment payments, 6.5 and seven percent, should be reduced to 5.5 percent.

C. Establishing a period of non-accrual.

17. Several commenters have suggested the Commission establish a period during which interest would not accrue on installment obligations. Alpine supports this proposal, and suggests it be set at a five-year period. During this period of non-accrual, licensees would be able to commit their resources to system construction and operation without an increasingly compounding installment debt. Then, upon having established themselves by the end of the period, C and F Block licensees would be in sufficient financial position to pay their installment debt without substantial risk of default or dislocation of service to the public.

¹⁰/ (...continued)

3. Increase the up-front payment required to qualify for the auction to deter speculators.

D. Relaxing unjust enrichment rules to permit early sales.

18. Review of the comments submitted indicates substantial support for relaxation of the so-called unjust enrichment rules to facilitate an early sale of C and F Block licensees which experience financing difficulties. In view that there is no dispute but that C Block licensees paid full price for their licenses, relaxation or abolition of the unjust enrichment rules would appear to be one of the easier steps for the Commission to take in granting restructuring relief.

E. Allowing subordination for vendor and working capital financing.

19. The utility of allowing subordination of the installment payment debt for vendor and working capital financing appears to have virtually universal support. As Alpine made clear in its opening comments, the inability for vendors and providers of working capital to take a superior lien on the proceeds of sale of a PCS system, is a serious impediment to obtaining financing to effect construction and commence operations. Given the Commission's sole right to a lien on the system license, subordination of the installment debt for the proceeds of sale of the system would not appear to pose any substantial degree of risk.

IV. Conclusion.

20. In summary, review of the comments submitted and the exercise of common sense suggests that allowing wholesale default by C Block licensees is not in the public interest. Were the Commission a financial institution, faced with the prospect of substantial defaults by debtors, it would not stand idly by waiving

installment notes and saying, "This is the deal you made, you are struck with it." No financial institution would let such a huge chunk of its capital evaporate by default. It would effect a workout to realize the best of a bad situation. The Commission, with its obligation to serve the public interest and America's taxpayers, should do no less.

21. As Alpine stated in its comments, if C and F Block licensees fail for lack of capital, it will likely result in large part in their markets being acquired by wireline affiliates, with a resulting re-concentration of the telephone industry. As the Commission's Chairman has most recently observed in the context of a contemplated AT&T/Southwestern Bell merger, such a re-concentration is not in the public interest. Where this emerging technology promises real competition in the local loop, failing to seek to protect this entrepreneurial aspect of C Block licensees would do the public a disservice.

22. For all of these reasons, the Commission should grant the pending requests for restructuring of installment payment obligations as discussed above.

Respectfully submitted,

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July 8, 1997

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CERTIFICATE OF SERVICE

I, Vicki J. Ritter, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, Chartered, hereby certify that I have, on this July 8, 1997, caused to be hand-delivered a copy of the foregoing Reply Comments to the following:

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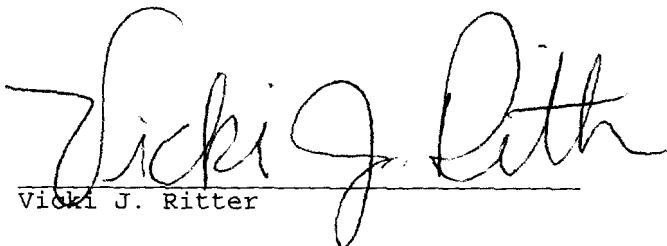
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